

January 14, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MM Docket No. 98-203
Ex Parte Notice

Dear Ms. Roman Salas:

The Association of America's Public Television Stations ("APTS") hereby notifies the Commission of the following ex parte meetings in the above-captioned proceeding regarding ancillary and supplementary uses of noncommercial digital spectrum. The meetings occurred on January 12, 2000, and were attended by Marilyn Mohrman-Gillis, Vice President, Policy and Legal Affairs, Lonna Thompson, Director of Legal Affairs, APTS, Steve Bass, President and CEO, WDCN, and Jerry Franklin, President and CEO, Connecticut Public Television. We met with the following persons:

Commissioner Michael Powell
Peter Tenhula, Legal Advisor

Commissioner Susan Ness
David Goodfriend, Legal Advisor

Commissioner Harold Furchtgott-Roth
Helgi Walker, Legal Advisor

Thomas Power, Legal Advisor to Chairman Kennard

Rick Chessen, Senior Legal Advisor to Commissioner Tristani

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We discussed the position of APTS set forth in its filing in the ancillary and supplementary proceeding and provided the offices with the attached materials. Should any questions arise concerning this matter, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marilyn Mohrman-Gillis", written over a horizontal line.

Marilyn Mohrman-Gillis
Vice President, Policy and Legal Affairs
Lonna Thompson
Director, Legal Affairs
Association of America's Public Television Stations

cc: Commissioner Michael Powell
Peter Tenhula, Legal Advisor
Commissioner Susan Ness
David Goodfriend, Legal Advisor
Commissioner Harold Furchtgott-Roth
Helgi Walker, Legal Advisor
Thomas Power, Legal Advisor
Rick Chessen, Senior Legal Advisor

ANCILLARY AND SUPPLEMENTARY USE OF DIGITAL SPECTRUM

The position outlined below reflects the consensus recommendation of the APTS Legislative Advisory Group adopted by APTS Board of Trustees and incorporated into comments filed by APTS on February 16, 1999, reply comments filed on March 16, 1999, and an ex parte filing on October 8, 1999.

1. Public television is asking the Commission to extend to a digital environment the same restrictions currently placed upon a public television station's channel uses in an analog environment:
 - The channel must be used "primarily" for a noncommercial, nonprofit, educational service (Section 73.621(a) of the Commission's rules).
 - Any ancillary and supplementary service provided by the station to generate revenue may not interfere with the station's provision of its public telecommunications service (Section 399B of the Communications Act).
2. As long as public stations meet these tests, they should be permitted to provide ancillary and supplementary services to generate revenue.
 - Public television stations necessarily operate with a variety of funding sources from both federal, state and private sources.
 - Even with this funding for the digital transition, stations must have the ability to use excess capacity to generate revenue to support expanded and enhanced digital services on an ongoing basis.
3. The Commission need not impose further restrictions on public television stations' use of their digital channel at this time.
 - Stations have external constraints directing the use of their channels.
 - Stations are governed by local governing boards and state law.
 - Stations are nonprofit entities. As such:
 - they must engage primarily in activities that further their exempt purposes;
 - they must pay taxes on any for-profit activities in which they engage; and

- for-profit activities may not become disproportionately large in relation to stations' primary activities or they run the risk of losing their nonprofit status and subsequently losing their noncommercial licenses.
 - Public television stations are committed to expanding and enhancing their educational services on their digital channels.
 - Restrictive FCC rules are premature. The FCC should allow for public television stations to explore the full range of ancillary and supplementary revenue generating opportunities that may be available. If any public television station engages in activities of concern to the FCC, it can address those on a case-by-case basis.
4. Permitting advertiser supported services on "otherwise transmitted" ancillary and supplementary uses of the channel does not violate the Communications Act.
- Although Section 399B defines advertising to include messages or programming "broadcast or otherwise transmitted," the language of the prohibition against advertising in Section 399B forbids only the "broadcast" of advertisements and makes no reference to signals "otherwise transmitted."
 - Therefore, the 399B prohibition does not apply to ancillary and supplementary digital services that must be considered "otherwise transmitted."
 - This interpretation is consistent with the FCC's rules in the analog context, in which the Commission has permitted the transmittal of advertiser supported ancillary and supplementary services in the vertical blanking interval (VBI) of the analog channel notwithstanding 399B.
 - The purpose behind 399B—to insulate public television from "program control and content from the influence of special interests"—will not be violated by advertiser-supported ancillary and supplementary services.

Voluntary Guidelines for the Ancillary or Supplementary Use of Digital Television Capacity by Public Television Stations

Preamble. The public television stations have requested, in comments submitted to the Federal Communications Commission in MM Docket No. 98-203, that the FCC establish certain rules to govern public television stations' use of ancillary and supplementary digital capacity. Specifically, the stations have stated that the Commission should provide public television stations with substantial flexibility in the use of their excess digital spectrum to provide ancillary and supplementary service, so long as the digital channel is used primarily to provide a noncommercial educational service and the ancillary or supplementary services do not interfere with the provision of public telecommunications services.

The stations have developed a set of voluntary guidelines and standards to provide further detail as to how they would plan to implement the broad rules that they have proposed to the Commission. The voluntary guidelines were adopted by the APTS Board of Trustees on October 17, 1999. The voluntary guidelines are intended to establish an industry approved set of standards to guide stations' use of ancillary and supplementary capacity. The voluntary guidelines are based on the assumption that the Commission will adopt the "primarily" and "non-interference" rules proposed by APTS.

Voluntary Guidelines

- Public television stations, consistent with their unique educational and public service mission, commit to use their digital spectrum to make high-quality, educational programs and services available to all Americans.
- The provision of ancillary or supplementary services will not derogate the free, over-the-air digital program service of public television stations.
 - Stations will maintain their primary broadcast service at equal or higher technical quality.
 - Stations will adopt internal policies prohibiting the carriage of ancillary or supplementary services that contain inappropriate content in conflict with the educational mission of public television.
- The ancillary or supplementary services will not interfere with a station's primary noncommercial educational broadcast service in terms of either quantity or quality.
 - Entities that have an interest in ancillary or supplementary services (e.g., lessors of ancillary or supplementary capacity, or advertisers and/or sponsors for ancillary or supplementary services) may not influence the content of the licensee's primary noncommercial educational broadcast service.

- Licensees will exercise regular oversight over their station(s)' ancillary or supplementary services.
- Licensees will file an annual statement with the FCC certifying that:
 - They are using their digital channel primarily for noncommercial educational services; and
 - The ancillary or supplementary services provided by the station are not interfering with the station's primary noncommercial, educational services.